

Notice of Allowability**Application No.**

10/622,480

Applicant(s)

SIMON ET AL.

Examiner

GINA C. YU

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed on 4/9/08 and supplemental amendment filed on 9/11/08.
2. ☒ The allowed claim(s) is/are 1, 6-9, 16, 17, 19, 22-25, 27-32, 34-48, 56-63, 65-74, 76-90, renumbered to claims 1-66.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of the:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 20080909.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/Gina C. Yu/
Primary Examiner, Art Unit 1617

Terminal Disclaimer

The terminal disclaimer filed on September 11, 2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent Application S/N 10/432,329 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Election/Restrictions

Claims 1, 6-9, 16, 17, 19, 22-25, 27-32, 34-48 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(B), claims 56-90, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, February 7, 2006 hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on February 7, 2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Shruti Costales on September 9, 2008. Authorization for amendment to specification was given in a telephone interview with the same attorney on September 16, 2008.

The application has been amended as follows:

In claim 34, line 1, replace "33" with "1".

In claim 56, line 5, after "80°," insert "and wherein said at least one goniochromatic coloring agent is present in an amount ranging from 0.1% to 20 % of the total weight of the composition;"

In claim 56, line 9, after "70%", insert "and not being greater than 250 μ m in size,".

Cancel claims 64 and 75.

In specification, P. 3, between paragraphs [0011] and [0012], insert:

"BRIEF DESCRIPTION OF THE DRAWING

Figure 1 shows a color trajectory obtained with spectrogonioreflectometer for a liquid gloss prepared in accordance with the invention, comprising

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Sicoppearl® goniochromatic pigments sold by BASF. Figure 1 also shows for comparative purposes the color path for a Summit Gold YD30D nacre sold by Engelhard.

Figure 2 is a photograph of made-up lips with a liquid gloss prepared in accordance with the invention. The lips look "fuller". The presence of numerous highlight points and the high mean gloss of the composition are to be noted. "

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/

Primary Patent Examiner, Art Unit 1617